

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION–**

**Washington, D.C. 20554**

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**In the Matter of:  
IP-Enabled Services**

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**WC Docket No. 04-36; FCC 04-28**

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**VOIP REPLY COMMENTS OF THE  
UTAH DIVISION OF PUBLIC UTILITIES**

In response to comments filed by SBC, Qwest, Verizon, MCI, Comcast, and others who advocate the absence of state regulation of VoIP providers, the Utah Division of Public Utilities (DPU), herein, rebuts these comments and provides comments supporting the importance of state regulatory oversight to promote consumer protection and resolution of service quality issues. More specifically, in response to SBC's comments apropos consumer protection laws need only be of general, not telecommunication specific protection laws, the DPU asserts that state regulation of VoIP is critical to ensuring adequate resolution of service quality issues, and that the states are best suited to provide such consumer protection regulation. Additionally, the DPU provides comments on the necessity of a partnership between the FCC and the states asserting regulatory oversight of VoIP.

**I. Background**

There have been hundreds of comments with varying opinions as to how VoIP providers should be regulated. The DPU advocates that light regulation by the states is necessary to protect the rights of the industry and the consumer. AT&T (to some extent), Charter Communications, and some others share this belief. For instance, Charter believes, and the DPU concurs, that state commissions have an important role to play. Charter affirms, "states should receive and publish VoIP tariffs, resolve interconnection disputes with PSTN entities, collect and disseminate state-level USF monies, and act as a general clearing house for information collection and analysis."<sup>1</sup> In addition, AT&T acknowledged that there is still a role for "legitimate state regulatory oversight." Others

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<sup>1</sup> Charter Communications at pg 16, ¶3

such as SBC, Qwest, Verizon, MCI, and Comcast, however, argue that state regulatory authority should be bypassed and handled by the FCC or other government agencies. The DPU disagrees with this mindset of exclusive federal jurisdiction over VoIP providers. Since the introduction of the Telecommunications Act of 1996, states have been the primary force behind the progression of competition within each state. Through “light handed” state regulation, there has been a transparent transition from a monopolistic environment to a competitive environment in the telecommunication industry. Resultantly, the states have developed a balance between the rights of the competitive providers, the incumbent local exchange providers, and most importantly, the consumers.

## **II. “Light” State Regulatory Oversight is Beneficial to VoIP Providers**

The DPU along with Charter believe that it is advantageous for the VoIP provider to have the assistance of state commissions in the administration of interconnection agreements with the ILEC to assure fair and equitable access to the public network. Without state regulatory oversight of interconnection agreements, a competitive provider may experience higher rates and access blockage to the incumbent network. Interconnection disputes may also be in abundance because, at some point in the IP voice transmission, the majority of VoIP providers must access the PSTN. Consequently, this validates the reason for state oversight to immediately address and resolve interconnection disputes. This is to the advantage of VoIP providers since it would take a considerably lengthier period of time for the FCC to intervene and resolve interconnection disputes. Further, as stated in the DPU’s original comments to the FCC, it is anti-competitive to allow one provider to bypass rules and regulations that protect both the consumer and the competitive provider when a similar service is being provided via a new technology.<sup>2</sup>

Obtaining state CLEC Certification is also beneficial to VoIP providers in that it grants them rights unavailable to enhanced service providers. For instance, Charter Communications currently establishes an entity to obtain CLEC certification in all states where it offers voice communication service, irrespective of the technology it uses, to avoid any question about Charters right to interconnect its network with those of the ILECs. This, in turn, gives Charter entities the rights granted to “telecommunication carriers” and “local exchange carriers” under Section 251(b) (c) of the Act. This set of rights and responsibilities is more robust than those offered to an enhanced information service provider, which essentially has only the rights of end users seeking service from a carrier. Interconnection as an ESP/information services provider is limited to basic delivery of communications signals and lacks important and necessary “carrier-type functionality such as 911, SS7, grooming for call type, and active management of call routing.”<sup>3</sup>

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<sup>2</sup> Utah Division of Public Utilities at pg. 3-4

<sup>3</sup> Charter Communication at pg. 11-13

### **III. Consumer Protection and Quality of Service Should Be Lightly Regulated By States; General Fraud Laws Cannot Protect Consumers.**

SBC unreasonably states, “to the extent consumer protection issues arise in the market for IP-enabled services, they can be effectively dealt with through the normal application of non-communications-specific consumer protection laws, such as those addressing fraud.”<sup>4</sup> Consumer protection agencies, however, typically process fraud complaints, not service quality complaints. For example, complaints filed by telecommunication consumers are related to telecommunication company’s performance rather than fraud. There are no fraud laws that pertain to lost dial tone signal or delays in telecommunications provisioning of service. In addition, if protected by general fraud laws, telecommunication disputes put forward by consumers will not be addressed by personnel experienced in the telecommunication field and, therefore, will not have the specific focus they warrant.

The ability of states to administer service quality standards effectively, along with maintaining its consistent and reliable application, provides consumers with a dependable, local entity where they can voice their concerns and direct complaints. The DPU, for instance, regularly receives and investigates consumer complaints concerning telecommunication companies regulated by the Public Service Commission. The DPU personnel that review the complaints are experienced in taking telecommunication related complaints and, more importantly, are trained in handling telecommunication specific issues. Consequently, if resolution is at the state level, disputes will be resolved in a timely manner, and will be resolved appropriately to the satisfaction of the consumer, competitive provider, or both parties.

The complaint process in Utah is as follows: if a consumer has a problem with a regulated telecommunication company, initially, the consumer is expected to confront the company. If the issue cannot be resolved, a consumer may obtain an informal review of the dispute by calling the DPU complaint office. For informal complaints, consumers will receive a swift response from either the telecommunication company or the Division of Public Utilities within five working days of the day the complaint is received by the Division. There is also a formal complaint process that is often used by both consumers and competitive providers when both parties cannot reach a resolution to a problem. The state formal complaint process has been instrumental over the years in assuring resolution to problems between providers, and between consumers and providers. Uncertificated VoIP providers, on the other hand, may be at a disadvantage since they would be forced to take complaints and disputes to the FCC to be resolved.

For the most part, complaints are resolved within the five-day period. Some issues, however, are more onerous than others. Many telecommunications complaints require technical engineering expertise to resolve arduous problems that surface when a new technology such as VoIP is introduced. The state staffs possess the expertise to communicate problems to the telecommunication companies to assure that network problems such as network blocking, E-911/911 failure, unavailable facilities, etc. are

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<sup>4</sup> SBC Communication at pg. 10 ¶ 2

addressed and resolved in a favorable manner for the consumer along with issues that surface between the competitive providers and the incumbent local exchange providers. If functions states currently have jurisdiction over are passed on to the FCC, the “problem resolution process” would be cumbersome and unmanageable; the FCC does not have the intimate knowledge of the telephone infrastructure and consumer calling patterns to rely on educated decisions, not to mention the numerous complaints that would come from consumers and competitive providers in all states. Senator Ted Stevens (R-AK) sensibly stated, “there should not be a situation where there is absolutely no state regulation because consumers aren’t going to want to go to the FCC, and the FCC is not going to want all consumers to come into Washington to determine issues concerning quality of service and the kind of things that state regulators ought to be involved in.”<sup>5</sup>

**A. The DPU Is Very Successful in Resolving Telecommunication Disputes; It May Be Inefficient and Unreasonable For The FCC To Handle All Complaints**

From January of 1997 to January of 2004, the DPU has handled 11,485 complaints. Among the more frequent disputes resolved are: additional charges, billing problems, customer service, initial service, repair, shut off notices, and slamming. The complaint resolution process, if handled by the FCC, would be unnecessarily inefficient and, basically, will guarantee consumers a prolonged timeframe for resolution of telecommunication specific issues. The following charts statistically illustrate complaints handled by the DPU and, primarily, show evidence of the undue burden that will be placed on the FCC if they were to receive complaints from [a]ll states. Table 1 illustrates the average monthly complaints handled by the DPU for the previous seven years in Utah. Table 2 demonstrates the number of complaints by type and year in Utah (includes only January of 2004 data).

**TABLE 1**  
**Average Complaints Per Month**

<b>Year</b>	<b>Average</b>
1997	49.4
1998	113.3
1999	137.8
2000	159.8
2001	189.0
2002	170.6
2003	129.2

<sup>5</sup> Hearing of the Senate Commerce pg.3 ¶ 8

**TABLE 2** Complaint Statistics Handled by Utah DPU 1997 - January 2004

<b>Type of Complaints</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>	<b>2000</b>	<b>1999</b>	<b>1998</b>	<b>1997</b>	<b>TOTAL</b>
Additional Charges	19	218	219	199	197	153	53	32	1090
Billing Problems	17	312	424	499	277	203	154	52	1938
Cramming	0	29	21	16	28	55	127	0	276
Customer Service	11	191	271	341	272	211	127	14	1438
Deposits	1	3	36	24	19	23	26	7	139
Estimated Billing	0	0	5	0	0	0	0	17	22
High Bills	1	15	13	16	29	14	6	8	102
Initial Service	6	98	125	225	280	244	211	115	1304
Inquiry	4	116	133	107	44	64	51	37	556
Line Extension	0	0	0	1	0	7	1	0	9
Meter Reads	0	0	0	0	0	0	0	0	0
Non-Regulated	1	43	64	93	44	20	15	3	283
Outages	0	1	2	0	3	1	2	2	11
Personnel Issues	0	3	3	3	1	13	13	2	38
Rate Increases	0	5	4	4	3	2	18	9	45
Rate & Tariff	3	10	23	29	43	20	16	2	146
Repair	9	84	149	198	320	330	209	209	1508
Shut off or Notices	6	195	335	341	236	154	197	83	1547
Slamming	19	227	220	172	121	140	133	0	1032
Tree Trim	0	0	0	0	0	0	0	1	1
<b>TOTALS</b>	<b>97</b>	<b>1550</b>	<b>2047</b>	<b>2268</b>	<b>1917</b>	<b>1654</b>	<b>1359</b>	<b>593</b>	<b>11485</b>

6

#### IV. Conclusion

The Commission should consider the consumer's wants and needs in its analysis; otherwise, its decision may be unbalanced and in favor of the industry. The FCC is not well positioned to succeed without a partnership with the states. If the Commission determines that the states have no jurisdiction over VoIP or that a telecommunications provider such as those providing VoIP does not have to be certified, it takes away the ability of the states to resolve competitive issues that surface on a daily basis in a timely and appropriate manner. It is the states that are more intimately involved with the telecommunication infrastructure and the problems that surface in the competitive environment of which VoIP will become.

In closing, until VoIP technology matures to a point that digital is today, the DPU petitions the FCC to allow light handed regulation, which includes state certification by the State Public Service Commission. This will allow a smooth transition to the network and service of the future. The benefits of VoIP are immense, and are already being realized by thousands of consumers across the world, however, these benefits are not certain. Without quality service, and a local state agency to ensure a level of acceptable quality, the benefits of VoIP are greatly diminished.

<sup>6</sup> DPU Complaint Statistics

Respectfully submitted,

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